

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL *
5 PRESCRIPTION * MDL No. 2804
6 OPIATE LITIGATION * Case No.
7 _____ * 1:17-MD-2804
8 THIS DOCUMENT RELATES * Hon. Dan A.
9 CASE TRACK 8 * Polster

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13 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER

14 CONFIDENTIALITY REVIEW

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17 Remote videotaped deposition of CHRIS HEWELL,
18 held via Zoom on July 25, 2023, before
19 Lois A. Robinson, Registered Diplomat
20 Reporter and Certified Realtime Reporter,
21 commencing at approximately 10:03 a.m. EST

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1 Q Publix distributes opioids.

2 I'm sorry. Withdraw.

3 Publix distributes opioids. True?

4 MS. WHITE:

5 Object to form.

6 A Publix -- Publix distributes opioids,

7 yes.

8 MR. BADALA:

9 Q When did Publix first start

10 distributing opioids?

11 A That would be 2005.

12 Q What date in 2005?

13 A I don't have the exact date in 2005.

14 We opened our pharmacy warehouse in 2005.

15 Q As the Publix representative, you don't

16 know the date specifically in 2005 when Publix

17 started distributing opioids?

18 MS. WHITE:

19 Object to form.

20 A No. I didn't memorize the date we

21 started shipping opioids.

22 MR. BADALA:

23 Q Does Publix still distribute opioids

24 today?

25 A Yes.

1 Q Publix has been distributing opioids in
2 Cobb County from 2005 to the present. True?

3 MS. WHITE:

4 Object to form.

5 A Yes.

6 MR. BADALA:

7 Q These opioids include oxycodone?

8 A I'm sorry. Was that a question?

9 Q Yes.

10 A Can you clarify -- can you repeat the
11 question? I'm sorry.

12 Q Sure.

13 I was asking you about Publix
14 distributing opioids, and my follow-up question
15 is: Those opioids include oxycodone? Is that
16 true?

17 A Publix didn't begin shipping oxycodone
18 until 2016.

19 Q Does Publix still distribute oxycodone?

20 A Yes.

21 Q Including in Cobb County?

22 A Yes.

23 Q And those opioids also include
24 hydrocodone?

25 A Yes.

1 Q And what years did Publix distribute
2 hydrocodone?

3 A That would be 2005 to 2014, when
4 hydrocodone was rescheduled, and then again in
5 2016 until present.

6 Q All right. Thank you.

7 Those opioids also include fentanyl; is
8 that right?

9 A Publix began shipping fentanyl in 2016.

10 Q Publix still distributes fentanyl
11 today? Is that true?

12 A Yes.

13 Q Including in Cobb County?

14 A Yes.

15 Q Okay. I'm gonna show you another
16 document. I'll mark this Exhibit 4.

17 (DEPOSITION EXHIBIT NUMBER 4

18 WAS MARKED FOR IDENTIFICATION.)

19 MR. BADALA:

20 Q (Zoom distortion) quick objection
21 quickly.

22 Have you seen this document, "Publix
23 Objections in Response to Topics 1 to 7, 22 and
24 23"? Have you seen this document before?

25 A Can you scroll through the next pages?

1 Q Sure. It's --

2 A I'm sorry. Can you slow down?

3 Q Yeah, I can slow down. I can zoom out,
4 too. I don't know what's easier for you to see.

5 A Yeah. If you don't mind zooming out,
6 please.

7 Q Yeah. Is that better?

8 A Yes.

9 Q Okay. And you're --

10 Sorry.

11 You see it has the same topics we were
12 discussing, and then it has some objections
13 below, responses and objections. Did you see
14 this document in preparation for your deposition?

15 I see some of these topics are the ones
16 that you listed here. Actually, all of them, 22
17 23, and the ones we looked at in Exhibit 1.

18 A Yes.

19 Q Okay. Do you see here in kind of --

20 So you've seen this document before?

21 A Yes.

22 Q Okay. And you see here Publix writes,
23 "Rather, except for topic 9, Publix's witnesses
24 will limit preparation to January 1st, 2006, to
25 present"? Do you see that?

1 A Yes.

2 Q Okay. Now you see why I was asking you
3 about January 1st, 2006, to the present?

4 A Not really. Can you clarify?

5 Q Yeah. Your -- your counsel said that
6 you're gonna be prepared for the time period of
7 January 1st, 2006, to the present. See where
8 your counsel wrote that, where Publix wrote it?

9 A Yes.

10 Q Are you prepared for that today?

11 A Yes.

12 Q Okay. The law requires Publix to have
13 a suspicious order monitoring system. True?

14 MS. WHITE:

15 Object to form. Object to the extent
16 it calls for legal opinion or expert testimony.

17 You can answer, Mr. Hewell.

18 A I'm sorry. Can you repeat the
19 question?

20 MR. BADALA:

21 Q The law requires Publix to have a
22 suspicious order monitoring system. True?

23 MS. WHITE:

24 Same objections.

25 A The DEA requires distributors to have a

1 suspicious order monitoring system.

2 MR. BADALA:

3 Q And Publix understands that that is a
4 law; is that right?

5 A Publix understands the responsibility.

6 Q And that responsibility has existed in
7 the time period we're discussing of January 1st,
8 2006, to the present.

9 A Yes.

10 Q And when Publix started distributing
11 opioids in 2005, that was also the obligation;
12 isn't that right?

13 MS. WHITE:

14 Object to form and scope.

15 A Can you repeat the question?

16 MR. BADALA:

17 Q Sure.

18 Even in 2005, when Publix first started
19 distributing opioids, Publix knew that it -- it
20 was required to have a suspicious order
21 monitoring system. Isn't that right?

22 A Yes.

23 Q Having a suspicious order monitoring
24 system helps prevent the diversion of opioids.
25 True?

1 MS. WHITE:

2 Object to form.

3 A I suspect the purpose of a suspicion
4 order monitoring system is to prevent diversion.

5 MR. BADALA:

6 Q And, therefore, having one, having a
7 suspicious order monitoring system, helps prevent
8 the diversion of opioids. True?

9 MS. WHITE:

10 Object to form.

11 A Yes.

12 MR. BADALA:

13 Q How many suspicious orders did Publix
14 report to the DEA between January 1st, 2006, and
15 the present?

16 MS. WHITE:

17 Object to form.

18 A I'm sorry. Repeat the question?

19 MR. BADALA:

20 Q How many suspicious orders did Publix
21 report to the DEA between January 1st, 2006, and
22 the present?

23 MS. WHITE:

24 Same objection.

25 Sorry. Go ahead, Chris.

1 A Give me one moment here.

2 MR. BADALA:

3 Q And if you're looking at something,
4 just kind of indicate what you're looking at so
5 we can kind of follow along, please.

6 A I'm on tab 31, or A-31, of materials
7 consulted.

8 Q Okay. Sitting here today, do you know
9 the answer to my question?

10 A Um --

11 MS. WHITE:

12 Object to -- object to form.

13 A I don't -- I don't know the total
14 quantity. Give me one moment.

15 Based on my review of tab 31 and my
16 knowledge from reviewing Jennifer Warren's
17 deposition, I believe around 150 had been
18 reported in 3/2021.

19 Q Okay. My question was up to the
20 present. Do you know how many, including the
21 present?

22 MS. WHITE:

23 Object to form.

24 A I'm aware of at least 150.

25 MR. BADALA:

1 All right. Withdrawn.

2 Fair to say, based on the responses you
3 just gave us on behalf of Publix, that from 2006
4 through 2017 Publix did not report any suspicious
5 orders to the DEA?

6 A During that time frame, there were no
7 suspicious orders to report to the DEA.

8 Q Therefore, Publix did not report any
9 suspicious orders to the DEA. Is that right?

10 A That's correct.

11 Q And the first suspicious order that
12 Publix ever reports to the DEA is in 2018. Is
13 that right?

14 A Yes.

15 Q How many suspicious orders did Publix
16 report to the DEA in 2005?

17 A Publix didn't have any suspicious
18 orders to report to the DEA in 2005.

19 Q Therefore, Publix did not report any
20 suspicious orders to the DEA in 2005; is that
21 right?

22 A Yes.

23 Q Now, out of the suspicious orders that
24 you testified --

25 Withdrawn.

1 Out of the suspicious orders that

2 Publix testified that were reported to the DEA,

3 how many of those orders had to do with Cobb

4 County stores?

5 A There were no suspicious orders

6 reported for Cobb County stores.

7 Q Throughout --

8 Now, let me get the time frame so we're

9 on the same page.

10 From 2005 to the present, Publix has

11 never reported a suspicious order for the Cobb

12 County stores; is that correct?

13 A Yes, that's correct.

14 Q And you even made a note of that in

15 your -- well, the lawyers made a note of that in

16 these materials -- sorry -- in your -- your

17 notes, going back to Exhibit 2. Do you see that

18 here, "no suspicious orders reported from Cobb

19 County stores"?

20 MS. WHITE:

21 Objection to form.

22 A I'm sorry. Were you -- was that a

23 question?

24 MR. BADALA:

25 Q Yeah. Do you see that on my screen

1 MR. BADALA:

2 Q Okay. Mr. Hewell, welcome back. I had
3 just asked you before we went on our break about
4 PIMS. Do you recall that?

5 A Yes.

6 Q Was PIMS the first suspicious order
7 monitoring system used by Publix?

8 A PIMS was utilized to identify and flag
9 orders, yes.

10 Q Was there any other suspicious order
11 monitoring system used by Publix before PIMS?

12 A PIMS was the technology tool, part of
13 the suspicious order monitoring system, during
14 that time.

15 Q Okay. And what time period did Publix
16 use PIMS to identify suspicious orders?

17 MS. WHITE:

18 Object to form.

19 A Can you repeat the question?

20 MR. BADALA:

21 Q When was the first date that Publix
22 used PIMS to identify suspicious orders?

23 A So PIMS was utilized at the beginning
24 of our distribution, and it -- yeah. It was --
25 it was from the beginning, 2005.

1 application?

2 A Yes.

3 Q Okay. You see here Jason mentioned

4 to -- sorry -- Jason explained to the DEA that

5 Publix has a max -- has max ordering points? Do

6 you see that?

7 A Yes.

8 Q Does this refresh Publix's recollection

9 about max ordering points and the PIMS system?

10 A Yes. What Jason's referring to with

11 max ordering points there is the PIMS ship max.

12 Q Okay. And what was the ship max based

13 on?

14 A The ship max was a conservative maximum

15 that was a maximum shipping amount that a

16 pharmacy could order.

17 Q So that was by store?

18 A At this time, it was by the

19 organization.

20 Q And when you say "the organization,"

21 what do you mean by that?

22 A That was -- the ship max was set at the

23 organization level, not the individual store

24 level.

25 Q All right. So the Publix level?

1 A Right. Taking into consideration store
2 utilization, yes.

3 Q Okay. I just asked you about -- we'll
4 use your term now of ship max. And you were
5 talking about that it was done by store for the
6 entire -- entirety of PIMS. But looking at this
7 now, is it Publix's testimony that the max
8 ordering point was not by store and was, in fact,
9 by the Publix warehouse?

10 MS. WHITE:

11 Object to form.

12 A So, as I mentioned, the max ordering
13 point would take into consideration individual
14 store utilization to set that ship max, and then
15 future iterations of PIMS allowed us to set a
16 threshold by pharmacy.

17 MR. BADALA:

18 Q When did that happen that the threshold
19 could be set by pharmacy?

20 A That was in 2012.

21 Q So before 2012, PIMS did not allow
22 Publix to set a threshold by pharmacy. True?

23 A PIMS allowed us to set a threshold for
24 all of our pharmacies, so not true.

25 Q Okay. Before 2012 --

1 Well, withdrawn.

2 You just testified "and then future
3 iterations of PIMS allowed us to set a threshold
4 by pharmacy." Do you recall that?

5 A Yes.

6 Q And you said that future iteration was
7 in 2012. Is that right?

8 A That's right.

9 Q So prior to 2012, PIMS did not allow
10 Publix to set up a threshold by each -- for each
11 specific pharmacy. Is that right?

12 A I think -- I think I need some
13 clarification. I'm not understanding the
14 question.

15 Q Let's use Jason's terminology, these
16 max ordering points that you see in the document
17 before you. Do you see that?

18 A Uh-huh. Yes.

19 Q That max ordering point in 2011 was not
20 based on each specific Publix pharmacy. Is that
21 right?

22 A As I mentioned, it's based on all store
23 utilization to determine the max ship quantity.

24 Q All the stores taken together. Is that
25 what you're saying?

1 A Yes.

2 Q Not specific store number -- and I'm
3 just making up a store number -- 1234.

4 A That's correct. It wasn't
5 individualized by pharmacy.

6 Q And that was from the first date Publix
7 started distributing opioids all the way up until
8 about 2012. Is that your testimony today?

9 A Yes. It would have been shortly after
10 this -- this DEA inspection.

11 Q What specific date in 2012 did that
12 change?

13 A Give me one moment, please.

14 Q What document are you looking at to try
15 to find that specific date?

16 A I'm looking at A-7. And it would have
17 been in the fourth quarter of 2012.

18 Q Going back now to P-PUB-0210, the
19 document in front of us, Jason, he was the
20 superintendent of the Orlando distribution
21 center; is that right?

22 A Yes.

23 Q Okay. He writes, "Tony (Zoom
24 distortion) contact in getting this ball rolling?
25 We would need to have some form of report that

1 would be viewed by pharmacy ops and flag
2 suspicious orders."

3 Did I read that correctly?

4 A Yes.

5 Q And this is a document kept in the
6 ordinary course of business at Publix?

7 A I don't know what you mean by that.
8 Can you clarify?

9 Q Sure. It's a document produced by
10 Publix. It's a copy of an email that was
11 actually sent to you internally at Publix on or
12 about August 1st, 2011?

13 A Yes.

14 Q Okay. Still focusing on PIMS, once a
15 order was flagged by PIMS, what was the next
16 step?

17 A An order gets flagged by PIMS, and the
18 product wasn't shipped.

19 Q Anything else done after an order was
20 flagged?

21 A Pharmacies and pharmacy supervisors
22 were notified of the flagged order.

23 Q Anything else?

24 A Again, the product wasn't shipped. At
25 that point, the pharmacy supervisor would

1 determine whether or not the pharmacy potentially
2 needed a threshold increase or determine whether
3 or not there was activity that would warrant the
4 flagged order being deemed suspicious.

5 Q What did Publix call that process?

6 A I don't recall that we called -- that
7 we had a name for it.

8 Q Could we call that due diligence or
9 investigation of the flagged order?

10 MS. WHITE:

11 Object to form.

12 A We didn't specifically give it a name,
13 but that, you know -- we didn't -- we didn't
14 identify the process with anything.

15 MR. BADALA:

16 Q Okay. For the deposition today, we're
17 discussing that process. Can we refer to it as
18 the investigation into the flagged order?

19 MS. WHITE:

20 Object to form.

21 A I would call it part of our suspicious
22 ordering monitoring process.

23 MR. BADALA:

24 Q Okay. And who would perform this part
25 of Publix's suspicious order monitoring process?

1 MS. WHITE:

2 Object to form.

3 A Can you clarify what part of this --

4 MR. BADALA:

5 Q That's what I was trying to talk about.

6 The part where you said about the pharmacy

7 supervisor reviewing the order.

8 A Okay. What was the question? I'm

9 sorry.

10 Q From this time period of using PIMS,

11 who would review the flagged order?

12 A So the flagged order would be sent to

13 the pharmacy supervisor and the pharmacy manager

14 or the pharmacy.

15 Q How was it sent to them?

16 A It was sent via email.

17 Q Do you know what the email address was?

18 MS. WHITE:

19 Object to form.

20 A The email address for the recipients?

21 MR. BADALA:

22 Q The email address where it would come

23 from.

24 A At one point, it would have come from a

25 pharmacy CS audits email.

1 Q And you said "from one point." So what
2 point would that be?

3 A I don't know if that changed at all
4 during the -- the process. That's the -- that's
5 the mailbox that I'm aware of.

6 Q Okay. What criteria did the pharmacy
7 supervisor or manager use for determining whether
8 the flagged order looked suspicious?

9 A The criteria that we advised our
10 pharmacy supervisors to review is to determine
11 whether or not the pharmacy -- to review the
12 dispensing history of the pharmacies and
13 determine whether or not prescriptions that are
14 being dispensed are suspicious.

15 Or the other thing, we -- we sent out
16 monthly reporting to our pharmacy supervisors to
17 give them some trending report on their
18 pharmacies; for example, their percentage of
19 controlled prescriptions, cash pay patients,
20 et cetera.

21 And, then, one of the advantages that
22 we have to other distributors is that we're able
23 to get even more granular data, and we advised
24 our pharmacies to also review manual inventory
25 adjustment reports where pharmacies are making

1 manual inventory adjustments, with the intent
2 that our pharmacy supervisors are trying to
3 identify what a real suspicious order is; in
4 other words, an order that could potentially be
5 diverted; right?

6 So they're looking at some of these
7 metrics to determine whether or not there's
8 pilferage with manual inventory adjustments.
9 They're looking at the dispensing activity of the
10 pharmacy, and they're looking at trends and how
11 they, you know -- what their dispensing activity
12 looks like compared to other pharmacies.

13 Q Is all of that information contained in
14 a document on your materials considered list?

15 A I was referencing tab 20.

16 Q Okay. Just tab 20?

17 A That was one document, yes. Uh-huh.

18 Q Okay. Any other document that you just
19 referenced in your answer?

20 A No.

21 Q And it's your testimony, it's Publix's
22 testimony that everything you just listed in that
23 review occurred from the first date of
24 distribution by Publix all the way until 2016?

25 MS. WHITE:

1 Object to form.

2 A No.

3 MR. BADALA:

4 Q When using the PIMS system --

5 Sorry. Withdraw that.

6 Was PIMS designed internally by Publix?

7 MS. WHITE:

8 Object to form. Scope.

9 Mr. Hewell, you can answer if you know.

10 A I can't definitively answer that
11 question.

12 MR. BADALA:

13 Q Who reviewed and approved threshold
14 changes during the PIMS period?

15 A Pharmacies would request a threshold
16 change with their pharmacy supervisors. Pharmacy
17 supervisors would then have the approval of
18 threshold changes.

19 Q During the period of PIMS, was it the
20 Publix policy to notify a store if it was
21 approaching its controlled substance threshold?

22 A Yes, at times.

23 Q Were there ever any internal audits
24 conducted on PIMS?

25 A Can you clarify what you mean by

1 today?

2 A Yeah. I didn't specifically review
3 this document.

4 Q Okay. And do you see on the front of
5 this document, this document talks about flagged
6 order by OrderInsite, at least on page 1?

7 A Yes.

8 Q It talks about step-by-step
9 documentation on how an order is flagged and
10 reviewed -- is that right? -- at least on page 1?

11 A Sorry. I've got a really bad copy
12 here.

13 Q Okay. I can zoom in. I'm just looking
14 at this Q1.7.1.

15 This document talks about a
16 step-by-step documentation on how an order
17 flagged by OrderInsite is reviewed and cleared by
18 a pharmacy compliance analyst. Is that right?

19 A Yes.

20 Q It also talks about "supporting
21 documentation is maintained in the OrderInsite
22 system internal network drives and in a summary
23 case report."

24 Do you see that?

25 A Yes.

1 A Yes.

2 Q Okay. And nationwide, that means this
3 is for all of the Publix stores, including, if it
4 would be on here, Cobb County stores?

5 A As I understand it, this is a list of
6 all of our suspicious orders that were reported
7 in that time frame.

8 Q And if there were any suspicious orders
9 reported for Cobb County stores, they would have
10 been on this spreadsheet; is that right?

11 A Yes.

12 Q And, like you testified earlier, there
13 were no suspicious orders reported for a Cobb
14 County store throughout the entire time that
15 Publix has distributed opioids. Is that true?

16 A That's correct. There were no
17 suspicious orders to report.

18 Q And, therefore, none reported to the
19 DEA. Is that right?

20 A That's correct.

21 Q Okay. We are now -- that was marked --
22 that should have been Exhibit 18. Now we're
23 gonna go to 19.

24 (DEPOSITION EXHIBIT NUMBER 19

25 WAS MARKED FOR IDENTIFICATION.)

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C E R T I F I C A T E

I do hereby certify that the above and foregoing transcript of proceedings in the matter aforementioned was taken down by me in machine shorthand, and the questions and answers thereto were reduced to writing under my personal supervision, and that the foregoing represents a true and correct transcript of the proceedings given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.



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